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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of
Numbering Resource Optimization

)
) CC Docket No. 99-200
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To: The Commission

REPLY COMMENTS OF NEXTEL COMMUNICATIONS, INC.

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TABLE OF CONTENTS

	Page
SUMMARY	i
I. INTRODUCTION	1
II. THE COMMISSION SHOULD ESTABLISH A NATIONALLY UNIFORM AND COMPETITIVELY NEUTRAL NUMBERING POLICY	4
A. Numbering Conservation Measures Must Be Nationally Consistent To Be Effective	4
B. Competitive Neutrality Is Required.	7
C. Wireless Carriers Are Most At Risk From Patchwork Plans And State-Specific Conservation Measures.	9
III. VERIFICATION OF NEED FOR NXX CODES MUST BE REALISTIC.....	10
IV. IMPLEMENTATION OF THOUSANDS-BLOCK NUMBER POOLING IS WIDELY SUPPORTED AND SHOULD NOT BE DELAYED	12
V. TEN-DIGIT DIALING	16
VI. ADMINISTRATIVE MEASURES	17
A. Data Collection.	17
B. Use Of Audits.....	18
C. Enforcement Measures	20
VII. CONCLUSION.....	21

SUMMARY

The Notice of Proposed Rulemaking (“NPRM”) on numbering resource optimization elicited an outpouring of views from industry, state commissions and end users. As might be imagined, the details of specific commenter’s recommendations vary widely. One thing is plain, however: the Federal Communications Commission (“Commission” or “FCC”) must act decisively and expeditiously to institute a numbering optimization framework to free up stranded numbers and preserve the long-term viability of the North American Numbering Plan (“NANP”).

Regardless of the specifics of any optimization proposal, the vast majority of commenters agree that to be effective, numbering optimization must be administered at the national level. Uniformity of numbering administration across state boundaries is especially important to Nextel and other wireless carriers whose operations—including individual switches—span political boundaries and are particularly vulnerable to inconsistent regulations. A nationally consistent and competitively neutral policy, however, does not mean that “one rule fits all.” The Commission must consider the technical and market differences among carriers in order to craft truly competitively-neutral rules.

To promote uniformity and avoid anti-competitive effects on certain classes of carriers, the Commission also should refrain from additional delegations of authority to state public utility commissions. The states already have jurisdiction over rate center consolidations and expanded local calling areas, which can play an extremely important role in number conservation, as well as delegated authority to adopt code relief from among Commission-endorsed alternatives. The Commission should encourage rate center consolidations and should clarify that under its “Calling Party Pays” framework, landline-to-wireless calls are jurisdictionally CMRS and are not subject to landline rate center measurements. However, to avoid a delay in conservation efforts,

the Commission should not make rate center consolidation a prerequisite to number pooling implementation in a state or NPA.

By far the clearest consensus from the comments formed around the need for thousands-block pooling. As Nextel advocated in its comments, thousands-block number pooling implementation should be mandated according to uniform federal guidelines in the top 100 MSAs and in areas in jeopardy of exhaust for all carriers with Local Number Portability ("LNP") capability. Wireless carriers should commence participation in pooling a reasonable period of time after their FCC-scheduled LNP implementation deadline in November 2002. However, assuming improvements in the timeliness of code assignments, wireless carriers can contribute in the interim to number conservation through a requirement that they demonstrate higher fill rates before receiving new growth codes. Individual telephone number ("ITN") pooling and unassigned number porting ("UNP") should not be considered further because their cost/benefit ratios are much less favorable than that of thousands-block pooling.

Opinions varied widely on the verification of need for initial and growth NXX codes. For initial codes, Nextel suggests that carriers simply be required to certify that service will commence within 90 days of code activation, as some of the more onerous demonstrations suggested by other commenters would discriminate against new entrants. For growth codes, Nextel advocates a phased-in minimum utilization rate of 70 percent, representing a compromise between many industry commenters who want no objective showing, and several states that unrealistically call for utilization rates as high as 90 percent prior to assigning growth codes. As Nextel observed in its initial comments, wireless subscribership in some markets is growing too rapidly to wait more than three months to have additional codes assigned and ready for use.

Finally, many commenters joined with Nextel in supporting the implementation of mandatory ten-digit dialing which would reduce consumer confusion and free "protected" codes for assignment. Nextel was also in the mainstream in recommending improvements in number usage data collection and strengthening the numbering administrator's ability to undertake usage audits and enforcement measures. To ensure nationally consistent policies and procedures, audit and enforcement functions should not be delegated to state commissions.

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Nextel Communications, Inc. (“Nextel”), by its attorneys, hereby submits this reply to the many initial comments filed in response to the Commission’s *Further Notice of Proposed Rulemaking* (“NPRM”) in the above-referenced proceeding.¹ The NPRM presented a broad range of potential numbering resource conservation measures, each of which presents considerable complexity and implementation challenges. The comments demonstrate substantial concern both within the telecommunications industry and among state regulators regarding the rapid exhaust of area codes in many parts of the country and the possible premature exhaust of the North American Numbering Plan (“NANP”). The Commission’s challenge is to sort through the various suggestions to improve existing conservation measures and adopt new ones that are realistic, cost effective and competitively neutral.

I. INTRODUCTION

The NPRM elicited a large cross-section of commenters representing the varying viewpoints of industry, state commissions, and end-users. Not surprisingly given the diversity of

¹ See In the Matter of Numbering Resource Optimization, *Notice of Proposed Rulemaking*, CC Docket No. 99-200, RM No. 9258, NSD File No. L-99-17, NSD File No. L-99-36 (rel. June 2, 1999) (“NPRM”).

voices, commenters did not reach consensus on many of the details. Overall, however, there is a general consensus on the “big picture” issues. First and foremost is the broad-based agreement that additional measures are needed to preserve the long-term viability of the NANP.² Many commenters agree that substantial progress toward meeting this goal can be made by freeing up some of the 95 percent of total allocated NANP resources that are currently “stranded” due to the mismatch of an antiquated numbering administration and assignment process with today’s competitive environment.³

To accomplish this, and to promote more efficient number assignment and use in the future, Nextel’s comments emphasized the importance of implementing number optimization measures at the federal level to ensure a nationally uniform and competitively neutral numbering scheme. A patchwork of inconsistent state requirements governing the administration, deployment, use, assignment and auditing of numbering resources would have an adverse impact on competition – particularly on wireless carriers operating throughout multiple states and in regional or national networks. The Commission should strive to avoid the implementation pitfalls it is currently experiencing with E911 wireless services, where leaving carrier cost recovery and certain technical matters to hundreds of state and local regulatory entities has contributed substantially to obstacles that are hamstringing wireless E911 Phase I

² For example, only two commenters asserted that the Commission should commence the NANP expansion process now in lieu of the proposed conservation efforts because, in their view, the cost of most conservation measures would be too high. Neither provided empirical support for their positions. See United States Telephone Association (“USTA”) Comments at 3-4; National Telephone Cooperative Association (“NTCA”) Comments at 3.

³ See Ad Hoc Telecommunications Users Committee Comments at 5 (citing a Feb. 18, 1999 number utilization study by Lockheed Martin CIS).

implementation.⁴ Subjecting service providers to a plethora of different and sometimes inconsistent numbering initiatives would consign number resource optimization efforts to the same fate. State commissions, however, have a significant role to play in numbering conservation by undertaking rate center consolidations, which the Commission should encourage, as discussed below.

Nextel also urged the Commission to implement thousands-block number pooling in major markets for LNP-capable carriers, with CMRS providers participating in pooling after becoming LNP-capable. Nextel recognized that the Commission might seek ways for wireless carriers to contribute to conservation efforts in the meantime. For example, wireless carriers could be required to demonstrate higher code utilization rates than wireline carriers prior to receiving growth codes, to assure their near-term participation in the number optimization effort. Finally, Nextel suggested that the Commission should mandate nationwide ten-digit dialing and should oversee improvements to data collection, audit and enforcement mechanisms, with most of these duties being delegated to the NANPA and administered through uniform federal procedures.

On most issues the positions advocated by Nextel are consistent with those presented by a majority of the industry commenters and are often congruent with many state commission comments as well. Where the positions of the commenters tend to vary widely, Nextel's recommendations represent a reasoned compromise between the interests of parties on either extreme. As discussed in more detail below, Nextel offers the Commission a rational

⁴ Almost 18 months after the Commission's Phase I implementation deadline, only about two percent of the U.S. population has access to wireless enhanced 911 service.

framework within which to take the actions necessary to relieve the problem of proliferating number exhaust.

II. THE COMMISSION SHOULD ESTABLISH A NATIONALLY UNIFORM AND COMPETITIVELY NEUTRAL NUMBERING POLICY

A. Numbering Conservation Measures Must Be Nationally Consistent To Be Effective

Number exhaust is a national, not a state or local problem. The exhaust of an NPA in one state means one less NPA available for use in another state and thereby impacts the entire nation by shortening the life of the NANP.⁵ To be effective, a numbering optimization regime must be formulated at the federal level and uniformly administered, at least in broad form, throughout the nation. Congress recognized this when it gave the Commission plenary jurisdiction over numbering matters.⁶

The vast majority of commenters concur with Nextel that numbering optimization must be administered at the national level.⁷ It is telling that even the Regional Bell Operating Companies ("RBOCs"), which have significant experience with state commission regulation and would be perhaps the most directly impacted by several potential conservation measures, understand the importance of a consistent federal policy and have stated unambiguously the need

⁵ See Cellular Telecommunications Industry Association ("CTIA") Comments at 6 ("Regulatory actions that affect the supply of numbering resources are inextricably interrelated – area code jeopardy does not occur in a vacuum."); Airtouch Comments at 12 ("No state's numbering plan can be viewed in isolation . . .").

⁶ See 47 U.S.C. § 251(e)(1).

⁷ See, e.g., Airtouch Comments at 3-4; AT&T Comments at 10; CTIA Comments at 6; MediaOne Comments at 8; Nextlink Comments at 2-4; OmniPoint Comments at 3; PageNet Comments at 2; Personal Communications Industry Association ("PCIA") Comments at 10-14; PrimeCo Comments at 4; USTA Comments at 4, 15-15; Winstar Comments at 6.

to limit state authority over numbering matters.⁸ While the Telecommunications Act of 1996 (the “Act”) allows the Commission to delegate authority to the states, the Commission has affirmed that the Act “assigned to the Commission the responsibility for implementing a national numbering policy.”⁹

The Commission already has delegated to the states authority to implement area code relief. Moreover, states have full jurisdiction to implement rate center consolidations, in a manner and to an extent that they alone determine. Most commenters, including Nextel, view rate center consolidation as one of the most significant components of number conservation and, in the Commission’s words, a “vitally important long term measure to optimize the utilization of numbering resources.”¹⁰ None of the comments dispute that rate center consolidation could result in significant savings of numbering resources, and most commenters strongly endorse it.¹¹

Nextel recognizes that implementing center consolidation implicates fundamental state PUC intrastate ratemaking practices and policies involving, *inter alia*, rate rebalancing and toll/non-toll calling area revisions, to achieve revenue neutral results for the local exchange carrier. Such initiatives can be politically charged, time-consuming and complex. These efforts

⁸ See Ameritech at 2 (“Number optimization will not occur unless the national numbering plan is universally applied, adhered to, and enforced.”); BellSouth at 5-6 (any additional delegation of authority must “not thwart the development of a uniform national approach”); U S West Comments at 4 (optimization measures “must be defined by a national vision and crafted to serve the national public interest”).

⁹ See Order of the Pennsylvania Public Utility Commission Regarding Area Codes 312, 610, 215 and 717, *Memorandum Opinion and Order on Reconsideration*, 13 FCC Rcd 19009, 19022-23 (1998) (“Pennsylvania Order”).

¹⁰ NPRM at ¶ 116.

¹¹ See, e.g., Ad Hoc Telecommunications Users Committee Comments at 12; Cox Comments at 12; GTE Comments at 34; Nextlink at 7; Qwest Comments at 2-3; State Outline at 10; Time Warner Comments at 10-14; USTA Comments at 6-7.

are more than worthwhile, however, as the number optimization benefits of rate center consolidation can be geometric, particularly when combined with thousands-block number pooling.¹² Similar results can also be achieved by expanded landline local calling areas – another area of exclusive state jurisdiction.

Thus, the states are hardly insignificant players in number optimization efforts. On the contrary, achieving highly efficient number use and postponing premature NANP exhaust can best be accomplished by a joint federal-state effort. The Commission should clearly and unambiguously conclude that the states have authority to undertake rate center consolidation and/or establish expanded landline local calling areas for intrastate services. With so much control over number resource optimization already in the hands of over 50 different commissions, however, any additional delegation of authority to the states would threaten, as U S West comments, to “frustrate a consistent *federal* or *national* numbering policy.”¹³ A national numbering optimization policy does not mean, however, that Commission rules cannot consider the differing needs of statistically disparate areas within a state, such as the inherent differences between rural and urban areas.

State commissions argue as a general principle that they need flexibility to accommodate specific conditions within their states. There is nothing in having federal policy or national administration that is antithetical to states retaining flexibility. Federal policies can include

¹² Consolidating five rate centers into one produces a fivefold increase in number efficiency as, for example, a new entrant CLEC would need only one initial central office code (NXX) assignment instead of five. Combining rate center consolidation with the potential tenfold increase in efficiency resulting from thousands-block pooling could result – in this example – in up to a fiftyfold improvement in number use efficiency.

¹³ U S West Comments at 3 n. 4 (emphasis in original). U S West correctly emphasizes that the Commission should not grant “idiosyncratic authority” especially over decisions involving “number administration design rather than future deployment of the chosen design.” *Id* at 4.

“triggers” for implementation of particular measures and can, for example, be pegged to certain objective, statistical indicia on a rate center, NPA or MSA basis. Requiring the implementation of number pooling in a state’s major MSAs, but not in its rural areas is one example. State commission commenters have failed to demonstrate compelling uniqueness among state numbering circumstances that would mandate different conservation measures than those used in another state.

Nextel does not agree with a minority of commenters who suggest that the Commission should require rate center consolidation as an absolute prerequisite to the implementation of number pooling in a state.¹⁴ Because the consolidation process can present politically-charged issues that require time to resolve,¹⁵ there is a very real risk that such a prerequisite would result in gridlock, with *no* optimization measure being implemented for a considerable period of time, thereby allowing more and more NPAs to exhaust in the interim.

B. Competitive Neutrality Is Required

Under existing Commission rules, number administration must not unduly favor any one telecommunications industry segment, group of consumers, or technology over another.¹⁶ It is crucial that a policy of competitive neutrality extend to the actions of all regulatory bodies charged with any aspect of code relief or numbering administration. As stated in Nextel’s comments, numbering conservation measures that vary drastically from state-to-state would

¹⁴ See, e.g., Liberty Telecom Comments at 4; Sprint Comments at 21; AirTouch Comments at 8. Nextel notes that BellSouth proposes a more modest prerequisite, which would require merely that states show that they have “thoroughly examined the benefits and impacts” of consolidation prior to the implementation of pooling. BellSouth Comments at 21.

¹⁵ See Massachusetts Department of Telecommunications and Energy (“DTE”) Comments at 4; Maine PUC Comments at 16; VA SCC Comments at 2-3.

¹⁶ 47 C.F.R. § 52.9(a).

deter competition and favor incumbent service providers. A national carrier, for example, will be less likely to expand into a new state knowing that it will have to adapt its network and operations to different optimization requirements. Truly national measures will remove this as a consideration from carriers' market entry decision-making.

The suggestion of several commenters that the same requirements should be applied universally to all carriers in all services in all areas might appear initially to be the most competitively neutral rule. However, due to differences in network architecture, market presence, and other factors, a particular requirement, applied uniformly, could disadvantage one carrier over another. The fairest national policy should recognize that different carriers can contribute best to optimization in different ways.¹⁷ As Nextel proposed in its initial comments, for example, CMRS providers should not be required to implement thousands-block pooling as quickly as wireline carriers but could, during such interim period, meet higher utilization rates if they can be assured that additional numbers will be available on a timely basis.¹⁸ Likewise, code utilization rates could be set higher for carriers in major markets and jeopardy areas, and lower for carriers with a minimal presence in a market.

¹⁷ Nextel is not advocating a "carrier's choice" regime which could reduce the usefulness of measures such as thousands-block pooling, which rely on broad participation to be effective. Nextel continues to emphasize, however, that differences among industry segments must be considered in this proceeding. Furthermore, the CMRS industry has developed using a variety of technologies, operating systems, coverage areas, service features, etc. in response to Commission and Congressional intent – all of which have contributed significantly to the unprecedented vigorous competition that wireless users enjoy today. The Commission must not permit this competition to be undercut by inflexible number optimization initiatives that handicap particular wireless technologies or service features.

¹⁸ See Nextel Comments at 20. Bell Atlantic similarly suggests that CMRS providers be given a choice either to participate in pooling, or to meet strict number utilization standards. See Bell Atlantic Comments at 25. This matter is discussed further at pp. 10-12, *infra*.

C. Wireless Carriers Are Most at Risk from Patchwork Plans and State-Specific Conservation Measures

Wireless carriers are the class of service providers most likely to be disadvantaged by state-specific conservation measures and a national mosaic of disparate conservation requirements. Congress specifically intended to protect CMRS providers from a state-by-state patchwork of regulatory frameworks by exempting CMRS from state rate and entry regulation.¹⁹ Because they have less involvement with the wireless industry and do not substantively regulate CMRS, state commissions are less likely to have developed an appreciation of how certain measures can adversely impact wireless carriers.²⁰ Portions of the State Outline²¹ provide a vivid example of how states are apt to ignore the implications of certain of their requirements on CMRS providers. For example, the State Outline's recommendation that carriers prove that they are state certified before receiving NXX codes could prevent access to *any* codes by CMRS

¹⁹ See 47 U.S.C. § 332(c)(3)(A).

²⁰ Nextel is still paying — quite literally — for its experience in the Philadelphia area when it was unable to obtain any NXX codes as a result of a code rationing plan imposed by the Pennsylvania PUC in lieu of area code relief. Nextel was forced to “borrow” 215 and 610 numbers from another carrier for assignment to Nextel customers. To avoid inconveniencing these customers by changing their phone numbers now that new codes are available, Nextel continues to pay the recurring costs for T1 lines and other facilities involved in this makeshift arrangement. This Commission determined in its Pennsylvania Order that the state PUC's code relief approach exceeded its authority.

²¹ The “Outline of State Response to Numbering NPRM” (“State Outline”) represents the opinion of eleven state commissions and was submitted as an attachment to comments submitted by a number of state commissions.

providers.²² The State Outline also off-handedly asserts that “state enforcement should not raise any concerns; most carriers have been subject to state jurisdiction for years”²³

Because wireless networks operate without regard to state boundaries, it is much harder for them to conform to inconsistent state conservation measures. Omnipoint aptly echoes Nextel’s comments in explaining that “programming the [mobile switches] to behave one way in State A and yet another way in State B is cumbersome, technically problematic, and extremely expensive.”²⁴ The wide diversity of network architecture within the wireless industry also makes conformity to standards more complicated. The Commission, after careful evaluation, recognized this greater technical complexity in its CMRS LNP Forbearance Order, where it delayed local number portability (“LNP”) implementation for CMRS providers until November 2002.²⁵ The suggestion in the State Outline that the Commission accelerate the date by which CMRS providers must be LNP-capable again underscores the pervasive lack of understanding of the unique technical and network operations of the wireless industry in some state commissions.

III. VERIFICATION OF NEED FOR NXX CODES MUST BE REALISTIC

The NPRM elicited a wide range of recommendations regarding the showing to be required for obtaining initial and growth NXX codes. For initial code assignments, Nextel’s comments suggested that carriers be required to certify that they will initiate service within 90

²² State Outline at 3 (question 29). Any required certification showings should recognize that state certifications are not required for CMRS providers which are federally licensed under a variety of different geographic area and site-by-site licensing regimes. *See* Nextel Comments at 10.

²³ State Outline at 9 (question 93).

²⁴ Omnipoint Comments at 4.

²⁵ *See* Petition for Forbearance from CMRS Number Portability Obligations, *Memorandum Opinion and Order*, 14 FCC Rcd 3092, 3093 (1999) (“CMRS LNP Forbearance Order”).

days of initial code activation. Nextel concurs with the comments of Choice One, GST Telecommunications and others that any particularly stringent showing requirement for assignment of initial codes would discriminate against new entrants. Furthermore, such a measure is unnecessary because codes could be reclaimed if they are not used within the period established by the Code Guidelines.²⁶ Providing copies of equipment orders and contracts for unbundled network elements, as suggested in the State Outline, would be overly burdensome to all newly entering carriers.²⁷

For growth codes, many industry commenters suggest that there should be no additional requirements, such as minimum utilization rates, beyond the current months-to-exhaust worksheet.²⁸ At the other extreme, many states call for required utilization rates of 85 or even 90 percent.²⁹ Such high fill rate requirements are unrealistic even for efficient users of numbering resources such as the wireless industry. Unless the timetable for the code assignment and activation process is dramatically shortened, such requirements would result in carriers running out of numbers and being unable to meet consumer demand.³⁰ Recognizing the need for some

²⁶ See Choice One Communications/GST Telecommunications Comments at 4-5; PrimeCo Comments at 13.

²⁷ See State Outline at 3 (question 29). Because timely access to initial codes is so critical to a carrier's ability to commence operations in a new area, the showing required should be less stringent than that required for obtaining growth codes. At the same time, however, the NANPA should be authorized to deny initial code assignments to applicants unable to demonstrate their readiness to initiate service in the affected NXX(s) within 90 days of the time the CO code is ready to be activated.

²⁸ See, e.g., AirTouch Comments at 20; Ameritech Comments at 15-16; Choice One/GST Comments at 4-5; Cox Comments at 24; Level 3 Communications Comments at 3.

²⁹ See State Outline at 4 (questions 37-42); Virginia State Corporation Commission ("SCC") Comments at 4 (recommending 85-90% fill rates).

³⁰ In some circumstances, rapidly expanding wireless service providers can use up an NXX code in a matter of weeks. See Omnipoint Comments at 15.

objective data to verify growth code need, Nextel reiterates as an alternative a phased-in fill rate requirement that reaches 70 percent at the end of a two-year period.³¹

IV. IMPLEMENTATION OF THOUSANDS-BLOCK NUMBER POOLING IS WIDELY SUPPORTED AND SHOULD NOT BE DELAYED

The vast majority of commenters, including most state commissions, support prompt implementation of thousands-block pooling. For carriers that are capable of implementing it, thousands-block pooling should be mandatory in the top 100 MSAs and in areas where NPAs are in jeopardy of exhaust.³² Virtually the entire industry agrees that the Commission should define the rules governing the number pooling process. A few industry commenters do suggest that states should be permitted to "implement" pooling so long as they do so within Commission guidelines.³³ If not carefully circumscribed however, such delegations to states of authority could undermine national numbering uniformity. Varying pooling implementation "details"

³¹ See Nextel Comments at 10. Other industry commenters also supported the use of minimum fill rates to obtain growth codes. See CTIA Comments at 10 (supporting the same 60%-70% phased-in utilization rates, but only for areas in jeopardy); SBC Comments at 26-27 (recommending rates of 55% to 70%, phased-in over three year); Winstar Comments at 38 (recommending a flat 60% rate for established carriers). A 70% fill rate is an aggressive requirement and, given the length of time required for new code assignment and activation, should be the maximum imposed by the Commission.

In addition, during the interim period prior to wireless participation in thousands-block pooling, the Commission should adopt an emergency allocation procedure by which a carrier can request and expeditiously be assigned a growth code upon demonstrating that it will exhaust its telephone numbers assigned to a rate center within three months. Such emergency procedures were recently adopted by industry consensus for the 914 and 516 NPAs in New York State.

³² However, under no circumstance should pooling be used to forestall area code relief for NPAs that are in jeopardy. Pooling is a long-term, not a stop-gap conservation measure. While Nextel believes that immediate pooling implementation in the top 100 MSAs and jeopardy areas is worthwhile, it recognizes that U S West's recommendation to target pooling to NPAs within three to five years of projected exhaust represents a farsighted approach for the most efficacious use of pooling in the future. See U S West at 21.

³³ See, e.g., SBC Communications Comments at 88; Liberty Telecom Comments at 3-4; Cablevision Lightpath Comments at 7.

have the potential to pose problems for national—especially wireless—carriers, including conformance with different rules on fill rates, deployment schedules, sequential numbering, etc. This is particularly the case where wireless carriers maintain interstate, regional networks but must procure numbers from each state so that their customers can be reached via a local call. As Nextel observed in its comments, because the Commission has determined in its “Calling Party Pays” Declaratory Ruling that at least a subcategory of calls to CMRS subscribers are a CMRS rather than a landline service, there seems little justification in allowing state commissions, and by extension ILECs, to require the inefficient assignment of numbers to CMRS subscribers.

As a “middle ground” approach, the Commission could permit state commissions simply to deploy thousands-block pooling—after the federally-mandated deployment in areas discussed above—in those additional areas they deem appropriate. However, such deployment should only apply to LNP-capable carriers and should conform to all Commission-established pooling criteria.

Despite an overall consensus on the immediate need for thousands-block pooling, a number of commenters nevertheless support individual telephone number (“ITN”) pooling and unassigned number porting (“UNP”), failing to recognize the lower cost/benefit ratio of such measures. The additional degree of granularity available with these measures does not justify the significantly greater implementation time and costs, as outlined in the NANC Report.³⁴ ITN would require a standards setting process, the creation of a ITN pooling administrative function to manage individual numbers, the development of new vendor equipment, and the imposition

³⁴ See Number Resource Optimization Working Group, “Modified Report to the North American Numbering Council on Number Optimization Methods,” Oct. 20, 1998, Section 4 (“NANC Report”). See also, Nextlink Comments at 11 (“ITN pooling is an inefficient and costly method of number conservation and allocation.”)

of new switching technologies.³⁵ Wireless carriers in particular would be impacted adversely because of the need for both internal and external interfaces at each point of sale location, requiring substantial modifications to existing systems and consequently increasing the cost of service activations.³⁶ The NANC estimates that ITN would take four to six years longer to implement than thousands-block pooling, and despite the implication of some commenters, ITN is not an natural extension of thousands-block pooling.³⁷

Similarly, UNP also would be more costly and time-consuming to implement than thousands-block pooling. Beyond cost concerns, UNP raises issues of fairness and conservation efficiency. As the NANC Report states, "UNP could allow a [service provider] who has inefficiently managed its [telephone number] inventory to avoid the consequences of its actions at the expense of a [service provider] practicing prudent [telephone number] management."³⁸ Bell Atlantic notes that "UNP is not really a conservation measure at all, but merely a method to allow a carrier to get access to specific telephone numbers that it may want for some marketing purpose."³⁹ Given the multiple disadvantages of ITN and UNP, there is no need to proceed to these more drastic means unless thousands-block pooling and other measures prove inadequate.

³⁵ See NANC Report at Section 4.6.

³⁶ See *id.* at Section 4.6.5.

³⁷ See *id.* at Section 4.11; U S West Comments at 18-19 ("[T]he costs associated with 1K block pooling are not easily convertible to ITN pooling. In essence, the industry would have to start from scratch. If real-time number assignment from a pool is required . . . then new and significant changes would be required for OSSs and the network, at enormous cost to both the pool administrator and service providers. For this reason, U S West cannot imagine a case where the costs of ITN would not outweigh the benefits.")

³⁸ NANC Report at 6.7.1.

³⁹ Bell Atlantic Comments at 32. See also, Minority Comments of GTE and Winstar, NANC Report at 6.12.2 (warning that UNP will "allow service providers to 'cherry pick' and

continued...

Comments vary widely on the issue of CMRS participation in pooling. Several commenters assert that wireless participation would have little impact on numbering optimization and should not be required, while a few state commissions go so far as to make an untimely plea for reversal of the CMRS LNP Forbearance Order and mandatory CMRS participation. Between these two extremes, Nextel recommends that CMRS carriers commence participation in thousands-block pooling a reasonable time (e.g., six months) after wireless carriers in a particular market implement LNP. Nextel demonstrated -- and most parties accept -- that LNP is a prerequisite to the forms of pooling discussed in the NPRM. Ignoring facts such as the well-documented technical impediments to immediate or near-term CMRS participation in pooling does not make CMRS pooling participation possible. On the contrary, commenters who do so delude themselves that CMRS participation in pooling is a magical "silver bullet" that will alleviate number exhaust. This reflects the mistaken belief that number exhaust results primarily from increased wireless subscribership. As the NPRM itself recognized, and as Nextel explained in its initial comments, the unprecedented proliferation of number exhaust results from many factors including: the competitive entry of CLECs and new wireless competitors; the proliferation of new services requiring numbers including fax machines, second residential phone lines and dial-up internet access, e-mail and other applications requiring telephone number addresses; and the continued assignment of telephone numbers to service providers using a system designed for a monopoly service provider environment.⁴⁰ Additionally, the available

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accumulate numbering resources from others under the guise of having insufficient numbers"); Media One Comments at 30 (expressing anti-competitive concerns).

⁴⁰ See Nextel Comments at 3-4; NPRM at 3-4, 7-8; CTIA Comments at 17 ("no particular party should be blamed for the present crisis").

evidence suggests that delaying CMRS pooling participation until CMRS service providers are LNP capable will have no appreciable effect on the projected dates of potential NANP exhaust.⁴¹ Any interim impact can be mitigated, however, by requiring CMRS service providers to achieve high fill rates before being assigned additional 10,000 block NXX assignments, as discussed above.⁴²

V. TEN-DIGIT DIALING

Some commenters argue that mandatory ten-digit dialing is a conservation measure that would be unpopular with consumers and that would tend to create confusion.⁴³ The experiences of at least one state commission commenter, however, shows that these concerns may be misplaced when mandatory ten-digit dialing is combined with effective consumer education campaigns. For example, the Colorado Public Utilities Commission reports that it received only

⁴¹ Although this conclusion is not shared throughout the telecommunications industry, the most recent analysis of the NANPA's NANP exhaust model indicates that certain of the model's assumptions concerning wireless participation in thousands-block number pooling should be modified and revised. *See* Lockheed Martin CIS, "North American Numbering Plan Exhaust Study," Apr. 22 1999. Taking into account these revisions, a few years delay in pooling participation by wireless service providers would have little impact on NANP exhaust projections. The NANC is continuing to assess and evaluate this issue in the hope of providing the Commission with additional information in this proceeding.

In any event, however, the fact that CLEC NXX fill rates average only about five percent leads to the intuitive conclusion that the immense increase in CLEC market entry in recent years has resulted in thousands of stranded telephone numbers in CLEC-assigned NXXs. Thus, the most immediate value of implementing thousands-block pooling will come from CLEC participation – both in avoiding stranded 10,000 NXX blocks in the future as well as from the recovery of uncontaminated thousands-blocks for reassignment. The significantly more efficient use of telephone numbers in the wireless industry (closer to a 40 percent fill rate) supports the conclusion that delaying wireless pooling participation until wireless service providers are scheduled to become LNP (and LRN) capable will have substantially less effect on NANP exhaust projections.

⁴² Nextel reiterates, however, that CMRS carriers cannot reasonably be held to higher fill rates if additional numbers are not promptly available for assignment on request.

⁴³ *See, e.g.,* California PUC Comments at 24-25; Maine PUC Comments at 18.

three calls from customers who had complaints or problems when mandatory ten-digit dialing was implemented recently in the 303 NPA.⁴⁴ The Colorado PUC attributed the smoothness of the transition to a strong customer education program.⁴⁵

Nextel believes mandatory ten-digit dialing is an important competitively-neutral number conservation measure. Mandatory ten-digit dialing would free numbering resources by enabling the reclamation of "protected codes." It may also encourage states to adopt all service overlays for area code relief.⁴⁶ Accordingly, if the Commission for whatever reason, fails to adopt mandatory ten-digit dialing, it should at the very least encourage state commissions to move to ten-digit dialing on a reasonably rapid timetable.

VI. ADMINISTRATIVE MEASURES

A. Data Collection

As stated in Nextel's comments, the NANPA should serve as a single point for data collection, and this data should be released in carrier-specific form only to states with confirmed, enforceable confidentiality mechanisms in place. Near unanimous agreement exists among industry and state commenters that the NANPA is in the best position to serve as a collector of data.⁴⁷ Where the industry and the states differ is on the level of information that

⁴⁴ Colorado PUC Comments at 12. It should be noted that the Colorado PUC supports leaving discretion in the hands of the state commissions as to whether mandatory 10-digit dialing should be implemented. *Id.*

⁴⁵ *Id.*

⁴⁶ *See, e.g.* VoiceStream Comments at 24; PrimeCo Comments at 6-7; Winstar Comments at 18-19. Nextel opposes service-specific overlays because they are not effective at conserving numbers and are not competitively neutral, as they generally require the return of wireless telephone numbers already in use. *See* Nextel Comments at 24.

⁴⁷ *See, e.g.*, Choice One/GST Comments at 6; GTE Comments at 21; PCIA Comments at 33-34; PrimeCo Comments at 15; State Outline at 8-9 (question 89).

should be released, with the states arguing that they should have freer access to carrier-specific data.⁴⁸ While recognizing the need for confidentiality, some state commenters seem to take the position that because they have been trusted in the past with confidential information, they should be trusted with such information in the future.⁴⁹

Nextel, however, has discovered in its extensive participation in state numbering resource proceedings that some states have no mechanism in place for the safeguarding of proprietary carrier growth and code utilization information, such as that collected by the COCUS.⁵⁰ Given the competitive value of number utilization data, COCUS data should be released only to those states that have in place adequate confidentiality protections.

In addition to requiring that data be submitted by all carriers to the NANPA, the Commission also must improve the survey used in collecting this information. Nextel joins a majority of commenters in supporting the North American Numbering Council's recommendations for reform of the COCUS.⁵¹

B. Use of Audits

The Commission should delegate authority to the NANPA or another neutral third party to conduct "for-cause" and "random" audits of data submitted by carriers. "For cause" and "random" audits are a highly effective means of judging the accuracy of data submitted and

⁴⁸ See, e.g., Ohio PUC Comments at 13-16; Wisconsin PUC at 9; State Outline at 7 (question 68-70).

⁴⁹ See, e.g., State Outline at 7 (question 68-70).

⁵⁰ Nextel Comments at 21.

⁵¹ See "Recommendation of the North American Numbering Council Concerning Replacement of the Central Office Code Utilization Survey," June 30, 1999; see, e.g., Ameritech Comments at 18-21; AT&T Comments at 19-23, Cox Comments at 27; Florida PUC Comments at 14; GTE Comments at 21, 24-25; N.C. Utilities Commission Comments at 6; Nextlink Comments at 18; PCIA Comments at 33-34; PrimeCo Comments at 15; USTA Comments at 6.

detering non-compliance with numbering resource optimization guidelines.⁵² The Commission recognized in the NPRM that regularly scheduled audits conducted on an annual basis would be unduly burdensome,⁵³ and the majority of industry commenters agree that the benefits of regularly scheduled audits, even if conducted on a less than annual basis, would be outweighed by their cost.⁵⁴ The state commenters argue for the use of all three types of audits, including regularly scheduled audits conducted every three years,⁵⁵ but offer no evidence that the addition of triennial audits to “for-cause” and random audits would add significantly to the enforcement and reclamation process.

The interests of national uniformity would be much better served by a delegation of auditing authority solely to the NANPA or another neutral third party rather than by an overlapping system under which the states have concurrent auditing authority. The states certainly have an important role to play in assisting in the development of an auditing process. Permitting the states, however, to conduct independent audits could prove to be unduly burdensome and would undermine a nationally uniform approach to numbering resource optimization.

⁵² See, e.g., Nextel Comments at 22; Cincinnati Bell Comments at 8; Bell Atlantic Comments at 1071.

⁵³ NPRM at ¶ 86.

⁵⁴ The majority of industry commenters agree that regularly scheduled audits are an unnecessary burden. The industry, however, split on whether random audits are necessary. See, e.g., Bell Atlantic Comments at 10-11; Cincinnati Bell Comments at 8-9; Cox Comments at 27; Nextel Comments at 22 (supporting random and for-cause audits); Connect Communications Comments at 9; GTE Comments at 29-31 (supporting only for-cause audits).

⁵⁵ See, e.g., State Outline at 8 (question 82-84); Connecticut DPUC Comments at 8.

C. Enforcement Measures

A majority of commenters agree that the NANPA should have some degree of enforcement authority and that the withholding of NXX codes would be effective in deterring violations of the CO Code Guidelines.⁵⁶ The Commission also has the authority to impose forfeitures on all common carriers and thus the power to sanction those service providers guilty of willful and repeated abuse of federal number assignment rules and guidelines.

Several state commissions argue, however, that they should have the power to revoke carriers' state certifications for violations of numbering resource guidelines.⁵⁷ These states offer little elaboration on the factors they might choose to apply to carriers and do not take account of how one state's revocation action might impact a carrier with regional or nationwide operations. Further, seeking revocation enforcement authority, the states again ignore wireless carriers, which typically are not certified by the states.⁵⁸ Following this model would create an unnecessarily divergent enforcement scheme whereby wireline carriers would be subject to state sanctions and wireless carriers would be subject to sanctions only at the national level.

This result can be avoided. The Commission should delegate to the NANPA the power to withhold NXX codes as a sanction for carriers that fail to comply with reporting or audit requirements. All other enforcement mechanisms should be retained by the Commission. No enforcement or sanction authority should be delegated to the various state commissions.

⁵⁶ See, e.g., State Outline at 8-9 (question 89); Colorado PUC Comments at 5; Cincinnati Bell Comments at 9; GTE Comments at 29-31.

⁵⁷ See State Outline at 9 (question 94).

⁵⁸ Plainly, the decision to delegate or maintain administration functions such as auditing, enforcement and reporting at the federal level are all of a piece. If, contrary to Nextel's recommendations, the states are given audit responsibility, it would appear they should have the ability to sanction the landline carriers they regulate.

VII. CONCLUSION

Among the range of recommendations contained in the comments, the clearest consensus is that in support of thousands-block number pooling. Consequently, the Commission should develop detailed rules governing this process and mandate pooling implementation as soon as possible in areas where it is most needed.

Commenters also recognized the significant number conservation benefits possible from rate center consolidations and the Commission should strongly encourage states to undertake such consolidations. There is also substantial support in the comments for nationwide ten-digit dialing and improved data collection, audit and enforcement procedures. As for all number optimization measures, the Commission must ensure that these procedures are nationally uniform and competitively neutral, which can best be accomplished by refraining from delegating additional authority to the various state commissions.

Rather than recommending action that suits only its own interests without regard to other affected parties, Nextel has provided the Commission with suggestions for a moderate, rational approach to numbering optimization, reflecting a compromise between the extreme positions

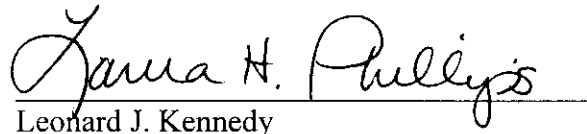
taken by various parties. Nextel urges the Commission to act promptly and decisively after evaluating the comments received in this proceeding.

Respectfully submitted,

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August 30, 1999

CERTIFICATE OF SERVICE

I, Vanese E. Hawkins, hereby certify that I sent a true and correct copy of the foregoing Comments of Nextel Communications, Inc. on this 30th day of August 1999, via hand to the following:

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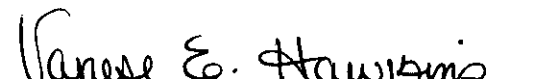
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